

U.S. OFFICE OF PERSONNEL MANAGEMENT

PAY & LEAVE PAY ADMINISTRATION

Fact Sheet: Availability Pay

Description

Availability pay is a type of premium pay that is paid to Federal law enforcement officers (LEO's) who are criminal investigators. Due to the nature of their work, criminal investigators are required to work, or be available to work, substantial amounts of "unscheduled duty." Availability pay is generally an entitlement that an agency must provide if the required conditions are met, but is optional in Offices of Inspectors General that employ fewer than five criminal investigators.

Employee Coverage

Eligibility for availability pay is limited to criminal investigators who are properly classified in the GS-1811 (Criminal Investigations) and GS-1812 (Game Law Enforcement) series under Office of Personnel Management standards, pilots employed by the U.S. Customs Service, and to Special Agents in the Diplomatic Security Service. Availability pay will be extended to Special Agents in the Diplomatic Security Service when implementing regulations are effective. Employees in these groups must also meet the definition of "law enforcement officer" in 5 U.S.C. 5541(3) and 5 CFR 550.103, which generally requires that the employee be covered under the early retirement provisions for LEO's. However, a criminal investigator is also entitled to availability pay if he or she holds a supervisory or administrative position that has been officially approved as a "secondary position" under the LEO retirement provisions, even if the criminal investigator is not personally covered by those provisions.

Rate

By law, availability pay is fixed at 25 percent of a criminal investigator's rate of basic pay. However, the biweekly maximum earnings limitation for LEO's in 5 U.S.C. 5547(c) applies.

Unscheduled Duty

"Unscheduled duty" consists of those hours when a criminal investigator performs work, or is determined by the agency to be available to perform work, that are not part of the criminal investigator's basic 40-hour workweek and are not regularly scheduled overtime hours, excluding the first 2 hours of overtime work on a basic workday. (See exception in 5 U.S.C. 5542(e) for employees who perform protective duties.) However, Special Agents in the Diplomatic Security Service may not be credited with hours of availability.

Annual Certification Requirement

Each criminal investigator and the designated supervisory officer shall make an initial, and thereafter, annual certification to the head of the agency attesting that the investigator (1) currently meets the "substantial hours requirement" (unless it is the initial certification) and (2) is expected to meet the requirement during the upcoming 1-year period.

Substantial Hours Requirement

EXHIBIT 5

A criminal investigator is eligible for availability pay only if he/she has an annual average of 2 or more hours of unscheduled duty per regular workday. Availability hours (nonwork) on days that are not "regular workdays" cannot be credited for this determination. See 5 CFR 550.183 for more information on this computation.

Regular Workday

A "regular workday" includes each day in the criminal investigator's basic workweek in which the criminal investigator completes at least 4 hours of work. Hours that do not count include overtime hours, unscheduled duty hours, hours when the employee is traveling outside the official duty station, hours of approved leave, holiday hours, and hours of excused absence. (The definition of a "regular workday" is in 5 CFR 550.183(b).)

Other Premium Pay

An agency may not pay a criminal investigator receiving availability pay-

(1) annual premium pay for administratively uncontrollable overtime (AUO) work or regularly scheduled standby duty, or (2) overtime pay under the Fair Labor Standards Act. Receipt of availability pay does not affect a criminal investigator's entitlement to other types of premium pay (including title 5 overtime pay) based on regularly scheduled duty hours. However, a criminal investigator receiving availability pay may not be paid any other premium pay based on unscheduled duty hours.

Title 5 Overtime Pay

For employees receiving availability pay, title 5 overtime pay is authorized only for overtime work scheduled in advance of the administrative workweek that is either in excess of 10 hours on a day containing part of the basic 40-hour workweek or on a day that does not include part of the basic 40-hour workweek. (See exception in 5 U.S.C. 5542(e) for employees who perform protective duties.)

Suspension

An employing agency may deny or cancel a certification for availability pay if a criminal investigator has failed to perform unscheduled duty as assigned or reported. However, the agency must follow adverse action procedures. (See 5 U.S.C. 5545a(e)(2) and 5 CFR 550.184(d) and (e).)

References

- 5 U.S.C. 5542(d) and (e), 5 U.S.C. 5545a
- 5 CFR 550.181-187, 5 CFR 550.103 (definitions of *criminal investigator* and *law enforcement officer*), 5 CFR 550.111(f) (authorization of overtime pay), 5 CFR 550.163(e) (relationship to other payments), 5 CFR 550.202 (rate of basic pay).
- Questions and Answers on Compensatory Time Off for Travel (See attachment 1, questions 32-35, which deal with availability pay recipients.)

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